

ADI 3,510

Scientific Research With Embryonic Stem Cells

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

May 29, 2008

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) on the law that regulated scientific research with embryonic stem cells, obtained from human embryos created by *in vitro* fertilization procedures (Law 11,105/2005, known as the Biosafety Law). The plaintiff claims that the research would imply the destruction of these embryos, which carry human life; therefore, it would violate the right to life and dignity of these embryos. For this reason, they argue that the law should be stated unconstitutional.

LEGAL REASONING

1. Law 11,105/2005 (Biosafety Law) authorizes the use of embryonic stem cells created by *in vitro* fertilization, for the purposes of scientific research and medical treatment, according to the following conditions: (i) nonviable embryos; or (ii) embryos frozen for three years or more; in either case, the parents' consent is required. The law also determines that ethics and research committees must review all stem cell research projects.
2. The Federal Constitution does not define the precise moment when human life begins, but when it refers to the dignity of the human person, it alludes to a person, a being endowed with personality. The embryo is an asset that requires protection, but it is not a person in the biographical sense. Human life is defined as the phenomenon that elapses between live birth and brain death. The Biosafety Law does not authorize pregnancy termination or the killing of a person. It only allows, for the purposes of research and therapy, the use of an embryo that has not been implanted in the uterus, which, in any case, would be discarded and would not generate a life.
3. Furthermore, embryonic stem cell research aims to find cure for serious pathologies and traumas that affect the quality of life of a significant part of the population, such as progressive spinal atrophies, muscular dystrophies, multiple sclerosis, amyotrophic lateral sclerosis, neuropathies, and motor neuron diseases. This is based on the idea that these cells are capable of differentiating and transforming into different types of tissue that could be regenerated. Their use would therefore be consistent with the freedom of scientific research and the health and dignity of sick citizens.

4. On the one hand, human embryos do not have and will not develop life. On the other hand, they can be used for scientific progress and to improve the life and health of seriously ill people. In any case, the decision whether or not to implant embryos is based on the right of a woman to make autonomous decision about her life plans, the right to family planning, motherhood, and responsible parenthood. From this perspective, a couple or woman choosing the artificial fertilization process does not entail a legal obligation to use all created and genetically viable embryos.

DECISION OF THE COURT

The Full Court of the Federal Supreme Court legitimized article 5 of the Biosafety Law (Law 11,105/2005), which authorizes the use of embryonic stem cells derived from unused human embryos cultured *in vitro* fertilization . The conditions determine that the embryos must be “nonviable”—no longer useful for assisted human reproduction—or have been frozen for three years or more. Additionally, parents’ consent is required for both cases. The law also demands that university ethics committees approve the research and prohibits the commercialization of embryonic stem cells, genetic engineering in living organisms, and human cloning.

ADDITIONAL NOTES

This is the first case in the STF's history with a public hearing.



part 1



part 2



part 3



part 4



part 5



part 6



part 7



part 8



part 9



part 10



part 11



part 12



part 13



part 14



part 15



part 16



part 1



part 2



part 3



part 4